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**September 26, 2003**

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**REMARKS**

This Amendment is in response to the Final Office Action mailed August 1, 2003 wherein pending claims 1, 3-9 and 12-21 were objected to and/or rejected to.

The specific objections/rejections to the claims are addressed in the following paragraphs, which have paragraph numbers and headings corresponding to those in the Office Action.

As an initial note, after conferring with Examiner Hoey and Examiner Calvert, the Final Office Action of August 1, 2003 was issued as a result of the USPTO's quality control program which withdrew the Application from issuance. In a telephone conversation with Examiner Calvert of September 24, 2003, Examiner Calvert indicated that the Amendment of March 11, 2003 was entered, and thus, the amendments presented herein reflect that status.

In light of the above however, Applicant has submitted herewith a petition to refund the RCE fee of \$750.00 as well as the fee of \$130.00 associated with the Petition to Withdraw from Issuance, both of which were submitted on July 22, 2003. Both the RCE and the Petition were unnecessary as the withdrawal from issuance was instigated by the USPTO before Applicant's Petition to Withdraw from Issuance was received.

**Claim Objections:**

(3)-(7)

In the Office Action claims 1, 12, 15, 20 and 21 were objected to for having obvious typographical errors which required correction. As indicated by the amended claims presented above, the corrections have been made.

**Specification**

(8)

The disclosure was objected to because Application numbers presented in the specification should be updated where the referenced Application has issued as a patent. As

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indicated by the amendments to the specification presented above, the appropriate updates have been provided accordingly.

**Claim Rejections 35 U.S.C. § 112:**

(9)

In the Office Action claims 9 and 19 were rejected under 35 U.S.C. §112, second paragraph because they contained trademarks or trade names. Specifically, the claims recite the names PEBAX and ARNITEL.

Applicant has amended claims 9 and 19 to recite equivalent chemical names to those of the rejected trade names. While Applicant recognizes that both Pebax and Arnitel are federally registered trademarks, one of ordinary skill in the art will recognize that PEBAX is a name that is used within the art to identify a commercially available form of polyether-block copolyamide polymer and ARNITEL is a name that is used within the art to identify a commercially available form of polyester-polyether block copolymer. No new matter has been added by the above amendments.

**Claim Rejections - 35 U.S.C. § 102:**

(10)

In the Final Office Action claims 1, 4 and 6 are rejected under §102(e) as being anticipated by U.S. 6,221,043 to Fischell et al (Fischell).

In response, Applicant asserts that nowhere does Fischell show, describe a balloon that when expanded has a middle portion that pushes against a stent *before* the first end portion of the balloon and *before* the second end portion of the balloon, as instant claim 1 describes. Instead of describing *when* portions of the balloon push outward against the stent as the instant claims describe, Fischell merely describes that the balloon in the inflated state is provided with a configuration wherein the middle portion of the balloon body has a diameter greater than that of

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the adjacent end portions of the balloon body (see Fig. 4 as well as column 7, lines 36-39). Nothing in Fischell provides any basis for determining *when* any portion of the balloon pushes against the stent relative to any other as in the instant claims.

Fischell also fails to teach that it is *the balloon which provides* for the configuration of when in the inflated state the middle portion diameter of the balloon is substantially the same as that of the first end portion diameter of the balloon and the second end portion diameter of the balloon as described in instant claim 1. When inflated in air the balloon of Fischell is provided with a middle portion diameter that is greater than the end portion diameter(s) (see column 7, lines 36-39). In Fischell it is the shape of the stenosis, as shown in FIG. 8, rather than properties of the balloon that provides the balloon with the substantially cylindrical configuration shown in FIG. 5 (see column 7, lines 45-63).

The implicit requirement that the shape of a stenosis is necessary to provide the balloon with the desired substantially cylindrical shape is in contrast to the instant claims wherein it is stated that in the inflated state *the balloon*, rather than some external acting force, provides the middle portion diameter with a diameter substantially the same as that of the first end portion diameter and the second end portion diameter.

In light of the above, the rejection is respectfully overcome.

**Claim Rejections - 35 U.S.C. §103**

(12)

In the Final Office Action claims 9 were rejected under §103(a) as being obvious over Fischell.

More specifically, the Office Action indicates that it would have been obvious to manufacture the balloon of Fischell from the materials provided in instant claim 9.

In response, Applicant notes that Fischell fails to teach or suggest a stent delivery system having all of the elements of independent claim 1 of the present Application. The

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additional elements asserted in the Office Action as being obvious in light of Fischell do nothing to address the failure of Fischell to teach or suggest all of the elements of instant claim 1.

For the reasons stated above the rejection is respectfully overcome.

**Allowable Subject Matter**

(14)

Applicant acknowledges allowance of claims 12-18, 20 and 21. As discussed above, Applicant has amended claims 12, 15, 20 and 21 as required.

(15)

In the Final Office Action claims 3, 5, 7 and 8 were objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form. In light of the above, Applicant believes instant claim 1 is in condition for allowance, as such those claims which depend therefrom are likewise in condition for allowance.

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**CONCLUSION**

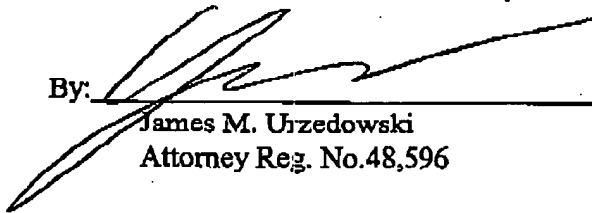
In view of the foregoing it is believed that the present application, with claims 1, 3-9 and 12-21 is in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,  
VIDAS, ARRETT & STEINKRAUS, P.A.

Date:

*9/26/03*

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